

VZCZCXYZ0039  
OO RUEHWEB

DE RUEHKV #0580/01 0781254  
ZNR UUUUU ZZH  
O 181254Z MAR 08  
FM AMEMBASSY KYIV  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5236  
INFO RHEBAAA/DEPT OF ENERGY WASHINGTON DC IMMEDIATE  
RUCPDO/DEPT OF COMMERCE WASHDC IMMEDIATE

UNCLAS KYIV 000580

SIPDIS

SENSITIVE  
SIPDIS

DEPT FOR EUR/UMB, EB/ESC/IEC - GALLOGLY/WRIGHT  
DOE PLEASE PASS TO LEKIMOFF, CCALIENDO  
USDOC FOR 4321/IEP/OEENIS/NISD/CLUCYK

E.O. 12958: N/A  
TAGS: [EPET](#) [ECON](#) [ENRG](#) [PREL](#) [UP](#)  
SUBJECT: UKRAINE: TERMS OF RECENT GAS AGREEMENT WITH RUSSIA  
APPEAR IN PRESS

REF: KYIV 501

11. (SBU) On March 13, Ukrainian news service "Ukrainska Pravda" published what it called the latest authentic version of the March 12 gas agreement between Gazprom and NaftoHaz entitled "Agreement on the Development of Gas Sector Relations." To date, no government officials have denied the authenticity of the document. The agreement as written seems largely consistent with earlier press releases and explanations. The agreement, like other Ukrainian-Russian agreements, is very "thin" given the importance of the agreement, even if it makes reference to other, previously signed technical agreements. In post's view, it is safe to assume that additional side agreements were made which are not accounted for in the text of the agreement. An Embassy Kyiv translation of the agreement begins in paragraph 7.

12. (SBU) According to the document, RosUkrEnergo (RUE) will continue to sell gas to NaftoHaz at least until December 12008. There is also no mention of RUE's exclusion from participation in future agreements (Note: Tymoshenko has been very careful to avoid mention of RUE's role in the latest gas deal, but she has considered the elimination the other gas middleman UkrHazEnerho (UHE) from the Ukrainian domestic gas market a major victory. End note).

13. (SBU) Widespread media reports claimed that Ukraine agreed to pay \$315 per thousand cubic meter (tcm) for Russian gas, but there is no mention of such a price in the agreement. However, NaftoHaz did agree to buy 1.4 billion cubic meters (bcm) of Russian gas via in kind gas transfers. (Note: NaftoHaz officials announced on March 18 that NaftoHaz will make two gas transfers of 700 million cubic meters of gas to Gazprom. End note.)

14. (SBU) A subsidiary, or subsidiaries, of Gazprom receive the right to sell no less than 7.5 bcm of gas on the Ukrainian domestic market to industrial customers of Gazprom's choosing. NaftoHaz agrees to facilitate these transactions for Gazprom, including helping Gazprom conclude agreements with customers of Gazprom's choosing. The agreement specifies no upper-limit to the Gazprom sales, but does set an upper-limit on the margin that the subsidiary (-ies) may earn. (Note: the industrial sector is the more lucrative portion of the Ukrainian domestic gas market. End note.)

15. (SBU) NaftoHaz agreed to inform Gazprom by March 15 of gas volumes in Ukrainian gas storage facilities belonging to RUE and UHE. This has been a particular murky issue for Gazprom, which in the past has accused Ukraine of illegally

withdrawing gas in storage belonging to RUE and UHE.

¶6. (SBU) The agreement does not address the issue of increases in the fees paid for transit or storage of Russian gas. However, it forbids Ukraine to re-export gas originally purchased for domestic use (Note: Since Ukraine is buying gas at \$179.50 per tcm, a price far lower than that paid by western European countries, energy experts assumed that Gazprom would not permit Ukraine to re-export gas. End note.)

¶7. (U) BEGIN TEXT OF GAS AGREEMENT TRANSLATION:

Open Joint Stock Company Gazprom of the Russian Federation, hereinafter referred to as Gazprom in the person of Board Chairman A.B. Miller acting under the Charter, on the one side, National Joint Stock Company NaftoHaz Ukraine of Ukraine, hereinafter referred to as NaftoHaz Ukraine in the person of Board Chairman O.V. Dubyna acting under the Charter, on the other side, hereinafter referred to as Parties, striving to settle on a mutually beneficial basis issues of natural gas supplies to Ukraine and sales of natural gas on the Ukrainian market, confirming its desire to transfer to market principles of management and pricing, signed this Agreement as a Deed on the following:

ROSUKRENERGO AG or Gazprom sells from January 1 through December 31, 2008 to NaftoHaz Ukraine natural gas of Central and Middle Asian origin on terms DAF at the border of the Russian Federation/Ukraine and/or border of Republic Belarus/Ukraine ("Incoterms" - 2000) in the amount of no less than 49.8 bcm at the price of USD 179.5 per 1000 cubic meters.

NaftoHaz Ukraine shall sign, beginning on April 1, 2008, with

a subsidiary or affiliated company of Gazprom created on the territory of Ukraine, a long-term contract on purchase and sales of natural gas of Central and Middle Asian origin in 2008 and subsequent years in an amount not less than 7.5 bcm annually for sales to industrial consumers of Ukraine with margin and in an amount not to exceed USD 0.01 per 1000 cubic meters. The Parties shall take into account that NaftoHaz Ukraine, in addition to purchases of Central and Middle Asian gas, shall sign with ROSUKRENERGO AG a contract on purchase-sales of natural gas of Russian origin in the amount of up to 1.4 bcm, with payment via returning the respective amounts of gas, and shall undertake an obligation in 3 days from the date of this Agreement sign a Commercial Act on delivery-acceptance of gas as provided in p.3.7 of the Contract.

NaftoHaz Ukraine and Gazprom shall within 3 days from the date of this Agreement sign a Technical Agreement on terms of delivery-acceptance of natural gas at the border gas metering stations for transit through the territory of Ukraine and transfer to Ukrainian consumers in 2008.

Gazprom and NaftoHaz Ukraine shall within 3 days from the date of this Agreement be obliged to sign a technical act on gas delivery-acceptance in January and February 2008 considering that ROSUKRENERGO AG and UKRGAS-ENERGO CJSC, simultaneously with signing the technical act, in accordance with the effective contract shall sign delivery-acceptance acts for January-February 2008 for amounts equal to 5.2 bcm.

Natural gas delivered to Ukraine is destined exclusively for the needs of Ukrainian consumers and is not subject to sales outside of the territory of Ukraine.

In the framework of this Agreement implementation NaftoHaz Ukraine is obliged to:

- receive all approvals, permissions, licenses and other documents necessary under the Ukrainian law and NaftoHaz Ukraine's corporate documents for carrying out its obligations under the Agreement;

- provide maximum assistance to the subsidiary or affiliated company to be created on the territory of Ukraine by Gazprom and/or its affiliated company necessary in accordance with the law of Ukraine permissions and licensing documents for implementation of activities on purchase and sales of natural gas to consumers of Ukraine, including permission from the Antimonopoly Committee of Ukraine;
- provide maximum assistance for the creation of a subsidiary and/or affiliated company of Gazprom and/or its affiliated company on the territory of Ukraine and for the concluding by such subsidiary and/or company of contracts on purchase-sales of gas with Ukrainian industrial consumers suggested by Gazprom;
- conclude with ROSUKRENERGO AG supplemental agreements, within the framework of existing contracts, to ensure that ROSUKRENERGO can withdraw gas stored in underground gas storage facilities in Ukraine and ship Central Asian gas supplied by ROSUKRENERGO AG through the territory of Ukraine to European consumers (for the period until such supplies expire);
- ensure in accordance with additional agreements for Gazprom/Gazprom Export in the framework of the existing contract on gas transit from June 21, 2002, additional transit of Central Asian gas amounts that were earlier supplied by ROSUKRENERGO AG company through the territory of Ukraine to European consumers (beginning with the start of such supplies by Gazprom Export upon its notice to NaftoHaz Ukraine);
- within 3 days after signing this Agreement to provide Gazprom confirmation of the amounts of natural gas owned by ROSUKRENERGO AG and UKRGAS-ENERGO CJSC and stored in underground gas storage facilities in Ukraine. From the moment of signing this Agreement the Parties shall take maximum efforts to ensure the settlement of debts of ROSUKRENERGO AG to Gazprom Group.

Any dispute, disagreement or demand occurring from this Agreement or in connection with it, including any pertaining to its implementation, violations, end or ineffectiveness, shall be transferred for consideration and final resolution

to arbitration in accordance with LCIA Regulations and these Regulations, as a result of reference to them, shall be incorporated as part of this reservation. There will be three (3) arbiters. The Place of arbitration will be: London, United Kingdom. The Language of arbitration will be English. The Law regulating this Agreement is the Law of Substance of England (without conflict rules).

The present Agreement becomes effective upon its signing by both Parties and transferring to Gazprom by NaftoHaz Ukraine written confirmation of completion of all consultations, approvals and permissions including the decision of the Ministry of Fuel and Energy on approval of terms of this Agreement and respective resolution of the Cabinet of Ministers of Ukraine that are necessary under Ukrainian legislation and NaftoHaz Ukraine's corporate documents for signing of this Agreement and its entering into force.

END TEXT.

18. (SBU) Comment. Although Prime Minister Tymoshenko and her supporters have declared the recent gas agreement a victory for Ukraine, both sides got something they wanted. It is important to note that the agreement is valid only until December 31, 2008, and does not provide increases in Ukrainian transit or gas storage fees. RUE also remains a player possibly until 2009. End comment.  
Taylor